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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/737,697	12/14/2000	Thomas H. Slaight	10-00-001	1400
46629	7590	03/24/2006	EXAMINER	
BAKER BOTTS, LLP 2001 ROSS AVENUE, 6TH FLOOR DALLAS, TX 75201			CHARLES, DEBRA F	
			ART UNIT	PAPER NUMBER
			3624	

DATE MAILED: 03/24/2006

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: .09/737,697
Filing Date: December 14, 2000
Appellant(s): SLAIGHT ET AL.

Jenni R. Moen
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed August 8, 2005 appealing from the Office action mailed January 12, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,397,197	GINDLESPERGER	05-2002
3,573,747	ADAMS ET AL.	06-1969

Claim Rejections - 35 USC § 102

Claims 1-3, 6-12, 14 and 16-32 remain and are finally rejected under 35 U.S.C. 102(b) as being anticipated by the Gindlesperger patent (US 6,397,197 B1).

The Gindlesperger reference discloses an electronic bidding system, comprising:

Means for enabling each of a plurality of vendors to submit bids on at least two parameters associated with a product (col. 7, line 60 through col.

8, line 2), means for calculating the total cost of the product to a purchaser for each vendor in response to the vendors bids, the total cost taking into account the at least two parameters associated with the product (col. 5, lines 28-35), and means for outputting each of the vendors bids and the total cost of the product to the purchaser (col. 7, line 60 through col. 8, line 2) (claim 1);

The bids includes a plurality of parameters for the product and the total cost calculating means determines the total cost of the product to the purchaser using a pre-determined total cost formula (col. 7, line 60 through col. 8, line 2) (claim 2);

The total cost formula includes at least one pre-defined constant (col. 7, line 60 through col. 8, line 2) (claim 3);

Means for enabling communication with the vendors during the bidding (col. 5, lines 11-27) (claim 6);

The communication means enables messages to be sent to the vendors to encourage further bidding by the vendors (col. 5, lines 11-27) (claim 7);

The communication means enables messages to be sent to the vendors regarding the status of the bidding, ending time for the bidding and extensions of the bidding (col. 5, lines 28-35) (claim 8);

Means for calculating the amount of savings for the purchaser and means for communicating the savings to the purchaser (col. 3, lines 30-37) (claim 9); and

Means for setting up the bidding on the product (col. 4, line 55 through col. 5, line 10) (claim 10).

The Gindlesperger reference discloses an electronic auction system, comprising:

A computer readable storage medium (inherent in computer system having storage means such as a database, col. 5, lines 10-14), and software (inherent in a computer system) stored on the computer readable storage medium and operable to receive bids from a plurality of vendors, each bid comprising a plurality of parameters associated with at least one product, calculate the total cost of the at least one product to a purchaser for each vendor in response to the vendors' bids, the total cost taking into account the plurality of parameters associated with the at least one product,

and output each of the vendors bids and the total cost of the product to the purchaser (col. 7, line 60 through col. 8, line 2 and col. 5, lines 28-35) (claim 11);

The at least two parameters are selected from the group consisting of price, discount, delivery, installation, training, maintenance, the risks covered by warranty, and length of warranty (col. 2, lines 24-37) (claim 12);

The software is further operable to send data to the vendors during the bidding to stimulate competitive bidding (col. 5, lines 11-27) (claim 14);

The total cost calculated for each vendor uses a single formula for all vendors (col. 7, line 60 through col. 8, line 2) (claim 16);

The total cost calculated for each vendor uses a plurality of formulas, each vendor having one of the plurality of formulas associated with it (col. 7, line 60 through col. 8, line 2) (claim 17);

The plurality of parameters is further associated with a plurality of products (col. 6, line 65 through col. 7, line 16) (claim 18);

The auction results take into account vendors bids on a market basket of prices (col. 6, lines 65 through col. 7, line 16) (claim 19);

Bids from vendors are received through the Internet (col. 7, lines 17-22) (claim 20);

The software is further operable to provide a vendor with data about the status of an auction while the auction is in progress (col. 5, lines 28-35) (claim 21);

The software is further operable to provide a purchaser with data about the status of an auction while the auction is in progress (col. 8, lines 7-9) (claim 22);

The software is further operable to control which vendors are allowed to participate in an auction (col. 5, lines 11-24) (claim 23); and

The software is further operable to allow a total cost formula to be defined for each product in an auction (col. 7, line 60 through col. 8, line 2) (claim 24).

The Gindlesperger reference disclose a method of conducting an on-line auction comprising:

Receiving bids from a plurality of vendors (col. 5, lines 18-23), each bid comprising a plurality of parameters associated with at least one product, calculating, using a computer, the total cost of the at least one product to a purchaser for each vendor in response to the vendors' bids, the total cost taking into account the plurality of parameters associated with

the at least one product, and outputting, using the computer, each of the vendors bids and the total cost of the product to the purchaser (col. 7, line 60 through col. 8, line 2) (claim 25);

Defining a plurality of parameters for a category of products (col. 7, line 60 through col. 8, line 2), and defining a total cost formula for the category of products in response to the plurality of parameters (col. 7, line 60 through col. 8, line 2) (claim 26);

The total cost formula includes at least one constant associated with at least one parameter (col. 7, line 60 through col. 8, line 2) (claim 27);

The plurality of parameters includes prices and non-price parameters (col. 7, line 60 through col. 8, line 2 and col. 2, lines 24-37) (claim 28);

The price parameters include at least one of a base price, volume, discounts, rebates, life cycles discounts, utilization charges, maintenance charges and administration charges (col. 7, line 60 through col. 8, line 2 and col. 2, lines 24-37) (claim 29);

The non-price parameters include at least one of a delivery timing, national service coverage, minimum quality levels, employee skill levels, a dedicated account management team, special reporting requirements,

online ordering, warranty and length of contract (col. 2, lines 24-37) (claim 30);

Defining a plurality of parameters comprises defining at least two sub-categories for the category of products, and defining at least two parameters for each subcategory (col. 1, lines 27-67) (claim 31); and

Communicating the best vendor's bid to the other vendors to encourage competitive bidding (col. 5, lines 28-35) (claim 32).

Claim Rejections - 35 USC § 103

Claims 4, 5, 13 and 15 remain and are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Gindlesperger patent as applied to claims 1, 11 and 25 above, and further in view of the Adams patent (US 3,573,747).

The Gindlesperger patent discloses all the elements of the present invention, as stated above, except for:

Means for communicating a vendor bid having the best total cost for the product to the vendors without revealing the identification of the vendor with the best total cost to encourage competitive bidding by the other vendors (claim 4);

Means for enabling the purchaser to make at least one adjustment corresponding to at least one of the vendor bids which is used by the calculating means to determine the total cost of the product to the purchaser (claim 5);

The software is further operable to send data, comprising a vendor bid having the best total cost for the product, to the vendors during the auction without revealing the identification of the vendor with the best total cost (claim 13); and

The software is further operable to enable the purchaser to make at least one adjustment corresponding to at least one vendor bid which is used by the central auction management system to calculate the total cost of the product to the purchaser (claim 15).

The Adams patent teaches:

Means for communicating a vendor bid, and software operable to send data having the best total cost for the product to the vendors without revealing the identification of the vendor with the best total cost to encourage competitive bidding by the other vendors (A-Abstract) (claims 4 and 13).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Gindlesperger system to include the teachings of the Adams patent so as to provide the vendors keep the vendors informed of the status of the process, while ensuring a secure and fair environment.

The Adams patent also teaches:

Means, and software, for enabling the purchaser to make at least one adjustment corresponding to at least one of the vendor bids which is used by the calculating means to determine the total cost of the product to the purchaser (A-col. 10, lines 48-53) (claims 5 and 15).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Gindlesperger system to include the teachings of the Adams patent so as to allow the purchaser to make modifications in case there are discrepancies and/or errors, and to allow the transactions in the system to be modified so as to ensure all the available quantities are bought and sold.

Response to Arguments

Applicant's arguments filed 10-07-04 have been fully considered but they are not persuasive. The Applicant asserts that the Gindlesperger patent does not disclose, teach or show a "means for enabling each of a plurality of vendors to submit electronic vendor bids on at least two parameters associated with a product." However, the Examiner disagrees and refers the Applicant to col. 7, line 60 through col. 8, line 2 of the Gindlesperger patent wherein it states, "the vendor's invitation for bid specifies the print information . . . so that each vendor will understand clearly all product, delivery and other requirements for the print information or service that is being place out for *bids* by the buyer." The Examiner interprets this passage as identifying that multiple bids can be given, and such bids are determined based on the product, delivery and other requirements. As such, the bids are submitted based on at least two parameter associated with a product, as presently claimed.

Applicant also states that the Gindlesperger patent does not disclose, teach, or suggest a "means for calculating a total cost of the product to a purchaser for each vendor in response to the vendors bids, the total cost taking into account the at least two parameters associated with the product." The Examiner interprets Gindlesperger as disclosing such

calculating means as disclosed in col. 7, line 65 through col. 8, line 2 wherein it states, "enabling each vendor to prepare a more precise calculation of its responding bid B."

The Examiner interprets Gindlesperger as disclosing such parameters input into the calculating means as disclosed in col. 1, line 50- col. 2, line 50, where the reference indicates various different factors that play a role in determining the final price.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Debra Charles



Conferees:

Vincent Millin



Sam Sough

